

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOECEPHUS MITTS,

Plaintiff,

v.

OBANDINA, *et al.*,

Defendant.

Case No. 11-cv-398-JPG-PMF

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 97) of Magistrate Judge Philip M. Frazier recommending that the Court grant the motion to dismiss filed by defendants Larson and Wahl (Doc. 83) and dismiss Count II of the First Amended Complaint without prejudice as redundant of Count I.

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court has received no objection to the Report. The Court has reviewed the entire file and finds that the Report is not clearly erroneous. Accordingly, the Court hereby:

- **ADOPTS** the Report in its entirety (Doc. 97);
- **GRANTS** Larson’s and Wahl’s motion to dismiss Count II (Doc. 83);
- **DISMISSES** Count II **without prejudice** as redundant of Count I;
- **CONSTRUES** the allegations in Count II of the First Amended Complaint to be

incorporated into Count I; and

- **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of the case.

IT IS SO ORDERED.

DATED: August 30, 2013

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE